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ONE HUNDRED SIXTH CONGRESS

# Congress of the United States

## House of Representatives

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January 5, 2000

### BY FACSIMILE

The Honorable Henry Solano  
Solicitor  
Department of Labor  
200 Constitution Avenue, N.W. - Room S2002  
Washington, D.C. 20210

Dear Mr. Solano:

As part of our continuing investigation of your agency's use of non-codified documents, I am requesting certain information about the Occupational Safety and Health Administration's (OSHA) November 15, 1999 non-codified guidance letter to T. Trahan of CSC Credit Services on OSHA's policies concerning employees working at home. On October 8th, I asked you to provide a compendium listing all of the Department's non-codified documents and a copy of each non-codified document, including your agency's explanation, if any, within each document to ensure the public's understanding of its legal effect.

On January 3, 2000, I received the second installment of OSHA's 1,641 non-codified documents for the March 1996 (when the Congressional Review Act (CRA) was enacted) to October 1999 period. Your office acknowledged that none of the 1,641 documents were submitted for Congressional review under the CRA and that none of the 1,641 documents had any legal effect. Unfortunately, OSHA's explanation within the documents themselves was not always clear on this absence of any legal effect.

With respect to OSHA's November 15, 1999 guidance letter in response to Mr. Trahan's August 21, 1997 request for information, please answer each of the following questions:

Q1. During the over two-year development period of the guidance, was any notice of its policy development published in the Federal Register?

Q2. Was the proposed guidance subject to prior public notice and comment? If not, why not?

Q3. Will the final guidance issued in November 1999 be published in the Federal Register and, if so, when?

Q4. Was the final guidance submitted to Congress under the CRA? If not, will it be submitted to Congress and, if so, when?

Q5. Is the final guidance legally binding? If so, please indicate the precise language in the guidance that provides your agency's explanation of its legal effect.

Q6. What is the precise statutory authority, if any, for OSHA to regulate employees working at home?

Q7. What alternatives did the Department consider before issuing the guidance, which states, "The OSH Act applies to work performed by an employee in any workplace within the United States, including a workplace located in the employee's home."

Q8. In response to the question, "Is the employer responsible for compliance with the home itself?" the guidance in part states "if work is performed in the basement space of a residence and the stairs leading to the space are unsafe, the employer could be liable if the employer knows or reasonably should have known of the dangerous condition." What is your agency's estimate of the costs associated with the entire guidance, including this provision? If unknown, why did the Department not prepare a cost estimate prior to issuance?

Q9. Due to the public outcry about this guidance, is the Department planning to revoke or revise this policy? If so, what is the timetable?

Your response should be delivered to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Wednesday, January 12, 2000. If you have any questions about this request, please call Professional Staff Member Barbara Kahlow on 226-3058.

Thank you for your attention to this request.

Sincerely,



David M. McIntosh

Chairman

Subcommittee on National Economic Growth,  
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton  
The Honorable Dennis Kucinich  
The Honorable Dick Armey  
The Honorable Tom DeLay